Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 1144 of 2001
Old F.A.F.O. No. 533 of 1980

Deepa Devi widow of Satya Singh, Resident of village Dingi, Patti Upli Ramoli, District Tehri Garhwal. (Applicant)

… **Appellant.**

Versus

Nag Chand Singh Rawat, Contractor, Job No. 24 Singtali Chailusain Motor Road, Post Silong Lansdowne, at present village Bhatlu Wala, Shyampur, Dehradun.

… **Respondent.**

With

Appeal from Order No. 1145 of 2001
Old F.A.F.O. No. 532 of 1980

Bhoora Singh S/O Inder Singh, resident of village Ghorpur, Patti Upli Ramoli, District Tehri Garhwal.

…. **Appellant.**

Versus

Nag Chand Singh Rawat, Contractor, Job No. 24 Singtali Chailusain Motor Road, Post Silong Lansdowne, at present village Bhatlu Wala, Shyampur, Dehradun.

…. Respondent.

Sri Rajendra Dobhal, Advocate, learned counsel for the appellant.
Sri J.P. Joshi, learned counsel for respondent.

Date November 4, 2006.
(Hon'ble B.S.Verma, J.)

Since the both the appeals under the workmen's Compensation Act 1923 **(for short the Act)** arise out of the same accident and controversy involved in these appeals is similar, therefore, for the sake of convenience, they are being decided together by this common judgment.

A.O. No. 1144 of 2001 has been preferred by Deepa Devi widow of Satya Singh against the impugned judgment and

order dated 16-7-1980 passed by the Workmen Compensation Commissioner Pauri Garhwal ***(for short the Commissioner)*** in W.C.Case No. 4 of 1977, Deepa Devi Vs. Nag Chand Singh Rawat, whereby the learned Commissioner had rejected the application of the applicant-appellant for compensation under the Act.

A.O. No. 1145 of 2001 has been preferred by Bhoora Singh against the order dated 16-7-1980 passed by the learned Commissioner in Case No. 3 of 1977, Bhoora Singh Vs. Nag Chandra Singh Rawat, whereby the claim petition of the appellant was dismissed by the learned Commissioner.

Relevant facts of the case as stated by the applicant-appellants in the claim petitions are that Bhoora Singh and Satya Singh were employed as labourers under the employment of the respondent in the year 1977 and they used to work on Chailusain-Singtali motor road. In the course of employment, due to sudden land slide on 15-9-1977, Satya Singh was buried under the mud while Bhoora Singh suffered injuries on his leg. It has been claimed that Bhoora Singh and Satya Singh both were employed on the daily wage of Rs. 10/- by the contractor. Therefore, the widow of Satya Singh and the injured Bhoora Singh filed claim petition for compensation before the learned Cojmmissioner. Smt. Deepa Devi claimed compensation of Rs. 20,000/- for the death of her husband Satya Singh, while Bhoora Singh claimed compensation of Rs. 8,000/- for the injuries suffered by him againsts the employer Nag Chand Singh Rawat.

Notices were issued to the opposite party-employer, who filed written statement and contested the petitions. In the written statement, the allegations made by the applicant-appellants were denied. In the additional pleas it was alleged that the deceased and the injured never sustained any injury in the accident in the course of their employment. The fact that deceased Satya Singh was

under his employment was denied. It was also stated that no notice was served on the opposite party-respondent.

The learned Commissioner framed following issues in Claim Case No. 4 of 1977:

1. Whether the deceased was workman, employed by the O.P. within the meaning of the Act?

2. Whether the deceased received personal injuries by accident, resulting in his death arising out any in the course of employment?

3. Whether the applicant is the dependent of the deceased?

4. To what relief, if any, the applicant is entitled to?

The following issues were framed in the Claim Case No. 3 of 1977:-

1. Whether the applicant is a workman within the meaning of the Act?

2. Whether the accident arose out of or in the course of the applicant's employment?

3. Whether the amount of compensation claimed is due or any part of that amount?

4. Whether the O.P. is liable to pay such compensation as is due?

The learned Commissioner recorded the evidence led by the parties, heard them and after perusing the material on record did not find favour with the contention of the applicants that Satya Singh suffered fatal accidental injuries during the course of his employment and accordingly dismissed the claim petition filed by the widow of Satya Singh. The learned Commissioner in the case of Bhoora Singh also did not accept the evidence led by the injured and dismissed the claim petition vide his judgment and order dated 16-7-1980. Aggrieved, the claimant-appellants have preferred the present appeals.

The only point for determination in these appeals is whether the learned Commissioner has committed illegality and perversity in holding that the claimant-appellant Deepa Devi failed to prove the Satya Singh died as a result of accidental injuries in the

course of his employment. On similar ground, the claim petition of the injured Bhoora Singh has been dismissed holding that it was not proved that Bhoora Singh sustained the injuries in the course of his employment under Nag Chand Singh Rawat contractor.

I have heard rival contentions of learned counsel for both the parties and perused the record.

The learned counsel for the appellants vehemently submitted that the learned Commissioner has committed manifest error of law on the face of record in not considering the testimony of PW 1 Bhoora Singh, produced by the claimant-appellant Deepa Devi. Learned counsel has pointed out that the testimony of Bhoora Singh coupled with the statement of P.W. 2 Mahanand Singh made on behalf of the respondent alone is sufficient to prove the relevant facts.

It is true that in the present cases, there is no post mortem report or the inquest proceedings or any police report in respect of death of Satya Singh. Sri Bhoora Singh was produced as P.W.1 by Deepa Devi in support of her claim. This witness has stated that he knew Nagchandra Singh, contractor, as he had worked under him. Satya Singh also worked with Nag Chandra. The accident occurred on 15-9-1977 on the Chailusain-Singrtali road. He has stated that while working on the road, there was land slide due to which Satya Singh was buried under the mud an died and he Bhoora Singh) sustained injuries on his leg. He was cross-examined by the respondent. On a suggestion given to him, he stated that the dead body was cremated in the river Ganga below the bridge and no post mortem was conducted on the dead body. A suggestion was also given to him and in reply he had stated that he had never given in writing on stamp paper to Nag Chandra that Satya Singh died as a result of stomach pain while going to his house in Tehri. He also stated that he had signed on some paper, but he did not know the contents thereof. The suggestion given from the side of contractor

Nag Chandra that he had written on stamp paper that deceased Satya Singh died of stomach pain is self-explanatory that there must have been acquaintance between Nag Chandra and the deceased Satya Singh. It is also a hidden truth that necessity had arisen to Nag Chandra to obtain something in writing regarding the death of Satya Singh on stamp paper for the reasons best known to him. In the examination-in-chief PW 1 had not stated anything regarding preparation of any document on stamp paper. When the suggestions given to Bhoora Singh P.W.1 are scrutinized closely, the truth itself is unfolded from the side of the respondent. The respondent Nag Chandra, who is very much alive, has not come forward to appear in the witness box and to explain as what had necessitated him to obtain in writing from Bhoora Singh on stamp paper particularly mentioning therein that Satya Singh died as a result of stomach pain. The testimony of P.W.2 Mahanand Singh makes the remaining truth crystal clear. Therefore, a reference to the testimony of Mahanand Singh is necessary.

P.W. 2 Mahanand Singh in his examination-in-chief has clearly stated that on Job No. 24, they were 15-20 persons including Mohar Singh, Pooran Singh, Dhooma Singh, Satya Singh alias Makra, Bhoora Singh, Kundan Singh, Dharam Singh Mangal Singh etc. and the nephew of contractor Nag Chand Singh, i.e. Jagmohan Singh used to remain at site. They used to work on his instructions. Due to cutting of rock, there was land-slide due to which deceased Satya was buried in the mud and Bhoora Singh got fracture in his leg. He further stated that Jagmohan Singh then asked them not to worry and the wife of the deceased shall be compensated by money. He also stated that Nag Chand was informed at Rishikesh by him, who said that he shall pay adequate amount to Deepa Devi, but he paid nothing. This part of his statement was not at all challenged in the cross-examination. This witness frankly admitted in the cross-examination that Nag Chand Singh was given in writing at Rishikesh by them that Makra died due to stomach pain. Therefore, in view of the averments made by these two witnesses, the burden was on the

respondent to have appeared in the witness box to clarify as to for what he had obtained a writing regarding the death of Satya Singh due to stomach pain. It has also not been denied by the respondent that his nephew Jagmohan was not deputed to look-after the work at site by him. Obviously, Nag Chand Singh Rawat and Jagmohan Singh were the best persons to have controverted the testimony of P.W.1 and P.W.2 before the learned Commissioner, but none of them could dare to appear in the witness box to speak the truth in the matter. These are very strong circumstances, which go to the root of the case and against the respondent. It has not been denied on record that Mahanand was not a labourer under the employment of the respondent, rather the manner in which this P.W. 2 was cross-examined, it reveals that Bhoora Soingh, Mahanand Singh, Satya Singh etc. were working as lobourers under the employment of contractor Nag Chand Singh, who had deputed his nephew Jagmohan Singh at the site. Above all, the respondent Nag Chand Singh Rawat could not dare appear in the witness box to depose even that false claim petitions were filed by the claimant-appellants against him just to cause financial loss to him father he tried to save his skin from compensation by way of cross-examination. Thus, from a careful perusal of the testimony of P.W. 1 and P.W.2, it stands sufficiently proved that deceased Satya Singh and injured Bhoora Singh both were under the employment of respondent Nag Chand Singh and they suffered accidental injures during the course of their employment.

In the claim Case No. 3 of 1977, Bhoora Singh Vs. Nag Chand Singh Rawat, the claimant-appellant had filed documentary evidence including injury report, X-ray plate etc. to prove that he had suffered fracture in his leg in the accident in the course of his employment. These genuineness of these documents was not denied by the respondent. In the written statement, the O.P.-respondent had not denied that Bhoora Singh was not employed as labourer by him. There is a very general denial of the allegations made in the claim petition.

In view f the discussion aforesaid, it is established that the workman Satya Singh sustained fatal injuries on 15-9-1977 due to accident caused in the course of his employment. It is also proved that claimant Bhoora Singh was also a labourer under the employment of resp0ondent-O.P. Nag Chand Singh Rawat on the relevant time and he suffered fracture of his ankle in the course of his employment due to accident. The findings of the learned Commissioner on Issue Nos. 1 and 2 in both the cases are set aside. Accordingly, Issue Nos. 1 and 2 of both the claim case No. 4 of 1977, Deepa Devi Vs. Nag Chandra Singh Rawat and Case No. 3 of 1977, Bhoora Singh Vs. Nag Chandra Singh Rawat are decided in affirmative and in favour of the claimant-appellants.

The learned Commissioner has not recorded any finding on Issue Nos. 3 and 4 which relate to the relief. In this view of the matter, it is a fit case to remand the matters to the learned Commissioner, who shall record findings on Issue Nos. 3 and 4. The writ petitions are liable to be allowed. The accident occurred as far back as 15-9-1977 and till now no relief was given to the claimant-appellants. It is desirable to direct the learned Commissioner to decide the claim petitions expeditiously.

Both the appeals are allowed. The impugned judgment and order dated 16-7-1980, under appeal, are set aside. Issue Nos. 1 and 2 in both the cases are decided in favour of the claimant-appellants, as mentioned above. The cases are remanded to the learned Commissioner for recording his finding on Issue Nos. 3 and 4. The learned Commissioner is directed to decide both the cases expeditiously after hearing both the parties in accordance with law as early as possible. Both the parties shall co-operate in expeditious decision of the cases before the learned Commissioner.

(B.S. Verma, J.)

RCP